



Planning Department

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**MEMORANDUM**

**To:** Steven Ledoux, Town Manager  
**From:** Roland Bartl, AICP, Planning Director  
**Subject:** Site Plan Special Permit Process

**Date:** February 5, 2009

The following is an outline of the Site Plan Special Permit process<sup>1</sup>. A Site Plan Special Permit is required under section 10.4.1 of the zoning bylaw:

10.4.1 Applicability – A Site Plan Special Permit shall be required as follows:

10.4.1.1 In the EAV, SAV, and WAV Districts, a Site Plan Special Permit shall be required in all instances

- 1) for the initial development of land specified in Section 3, Table of PRINCIPAL USES as requiring a Site Plan Special Permit and for all ACCESSORY USES thereto, or
- 2) where the NET FLOOR AREA of an existing BUILDING is increased 500 square feet or more for USES designated as requiring a Site Plan Special Permit on the Table of PRINCIPAL USES, or
- 3) where a USE designated as requiring a Site Plan Special Permit on the Table of PRINCIPAL USES is expanded in ground area by 500 square feet or more of either impervious material, open storage or any area of the site devoted to the conduct of the PRINCIPAL or ACCESSORY USE.


10.4.1.2 In all other zoning districts, a Site Plan Special Permit shall be required in all instances .... – *What follows is are the same 3 points as above, except that the thresholds are set at 1200 square feet.*

The Step by Step Procedures for Site Plan Special Permits follows on the subsequent pages.


## **Optional Steps – no time lines**

<b>Applicant's Initial Informal Contact with Planning Staff</b>	<ul style="list-style-type: none"><li>▪ Introduction to proposal.</li><li>▪ Initial troubleshooting.</li><li>▪ Preliminary discussion of zoning parameters.</li><li>▪ Q &amp; A on process – Site Plan Special Permit Rules &amp; Regulations.</li><li>▪ Referral to Design Review Board (DRB) for design recommendations.</li><li>▪ Generally, no records are kept after this initial meeting.</li></ul>
<b>Preliminary Departmental Review</b>	<ul style="list-style-type: none"><li>▪ At the request of the applicant or by recommendation of Planning Dept. staff (due to resource limitations Planning staff may determine that this step could be omitted with small plans or projects).</li><li>▪ Meeting with applicant and relevant department heads (typically Engineering, Planning, Health, Building, Conservation, Tree Warden, Fire Chief, Acton Water District Manager).</li><li>▪ Format is informal.</li><li>▪ Applicant presents plan and staff critiques plan verbally, raises points of concerns. The plan is usually conceptual.</li><li>▪ Applicant is reminded to contact and meet with DRB for design recommendations.</li><li>▪ Staff members may retain preliminary plan documents for further review and written or verbal comments.</li><li>▪ Applicant is expected to consider staff and DRB input and incorporate suggested changes into site plan before formal filing of Site Plan Special Permit application.</li><li>▪ Goal of preliminary review is to streamline special permit process for after formal application is made.</li></ul>

**Steps and Procedures under Law**  
**(M.G.L. Ch. 40A, §9 and Acton Zoning Bylaw section 10.4)**

<b>Applicant files application formally</b>	<ul style="list-style-type: none"> <li>Town Clerk date-stamps receipt of application, and sends applicant on to Building Department.<sup>2</sup></li> </ul>	<b>Day 1</b>
<p><b>Min. 35 days, Max. 65 days between application filing date and date of public hearing.</b></p>	Building Dept. secretary takes application/assigns <b>tracking number</b> .	
	Building Dept. secretary notifies Selectmen's secretary/Manager's office of filing with info on applicant and nature/type of application.	
	<ul style="list-style-type: none"> <li>Selectmen's secretary sets <b>public hearing date</b>, prepares public hearing notice, sends <b>public hearing notice to newspaper</b>, and <b>assigns Selectman</b>.</li> <li>Selectmen's secretary sends hearing notice and name of assigned Selectman to Building Department secretary.</li> </ul>	
	<ul style="list-style-type: none"> <li>Building Dept. secretary mails <b>public hearing notice</b> to applicant for registered (or certified) mailing to <b>parties in interest</b>.<sup>3</sup></li> <li>Building Dept. secretary sends copies of application with deadline for <b>departmental review comments</b> to internal distribution list: Selectmen assigned; Assessor (notice only); DRB; Engineering; Fire Chief; Health; Historical Commission; Historic District Commission (as needed per location); Natural Resources; Planning; Police Chief (notice only); Sidewalk Committee; Tree Warden; Water District; Transportation Advisory Committee (TAC).</li> </ul>	
	<p>Departmental review progresses. Meanwhile:</p> <ul style="list-style-type: none"> <li>Parties in interest receive notice.</li> <li>Public hearing ad appears in local paper.</li> <li>Planning department staff functions as <b>site plan coordinator</b> for all questions, interactions, communications, Q&amp;A with applicant, parties in interest, general public, etc.</li> <li>Planning staff meets with Selectman assigned as needed.</li> </ul>	
	<p>In the week before the hearing:</p> <ul style="list-style-type: none"> <li>Planning staff reviews comments received, finalizes Planning Department's comments and recommendations, and provides all comments to the Building Dept. secretary.</li> <li>Building Dept. secretary provides complete application, supporting documents, plans, all review comments, public hearing notice, etc. to Selectmen's secretary for inclusion into the Selectmen's meeting package.</li> <li>Building Dept. secretary sends departmental review comments to applicant before the public hearing.</li> </ul>	
<b>Public Hearing</b>	Board of Selectmen holds <b>Public Hearing</b>	<b>On Day 35 - 65</b>

Public Hearing	Board of Selectmen opens Public Hearing	On Day 35 - 65
One or more public hearing sessions		↑ ↓
	<p>Opening public hearing:</p> <ul style="list-style-type: none"> <li>▪ The Chair should read the public hearing notice.</li> <li>▪ The Chair should <b>verify that Parties in Interest were notified.</b><sup>3</sup> The hearing cannot proceed without proper notifications. If there was a notification flaw, the hearing must be re-advertised.</li> </ul>	
	The Selectman assigned to the application should be familiar with the proposed site plan to help facilitate the hearing discussion.	
	Hear applicant presentation.	
	Questions & comments from the members of the Board.	
	Questions & comments from present abutters/members of the public.	
	<p><b>Hearing Continuations</b> - the public hearing can continue to one or more subsequent sessions with the applicant's consent:</p> <ul style="list-style-type: none"> <li>▪ Chair must publicly announce the date, time, and place of each public hearing continuation. Re-advertising is not required.</li> <li>▪ Chair must obtain from the applicant a <b>public hearing continuation/decision deadline extension agreement</b> for every continuation.<sup>4</sup> The agreement should state the specific date, time and place of the continuation and the specific dated of the extended decision deadline, usually but not necessarily extended by the same time period by which the hearing is continued.</li> <li>▪ During the hearing, the Board can require additional information and studies related to the application, plan changes, the review by Town staff/advisory committees of plan changes, and the referral of specific matters to an outside third-party or peer reviewer<sup>5</sup>.</li> <li>▪ <b>The Board must maintain a quorum through all public hearing sessions.</b> A quorum for purposes of a special permit is at least 4 members, which must be same at each session. A member can miss up to one session and still vote as a member of the quorum, if he/she certifies in writing that he/she has reviewed a transcript, video tape, or audio tape of the missed public hearing session.</li> </ul>	
	Once it appears that all evidence and information had been received, the public hearing should be closed.	
	<ul style="list-style-type: none"> <li>▪ No information, comments, or memos received after the close of the hearing can be made part of the hearing record or be considered in the Board's deliberation.</li> <li>▪ Immediately after close of the public hearing, the Board should give staff preliminary indication/direction whether to draft a potential approval or denial, and in the case of potential approval - what special conditions or plan modification to include.</li> </ul>	
Public Hearing	Board of Selectmen closes Public Hearing	When Ready

Public Hearing	Board of Selectmen closes Public Hearing	When Ready
Decision must be issued within 90 days of the public hearing <sup>4</sup>	Planning staff drafts decision per preliminary Board direction.	
	Decision includes: <ul style="list-style-type: none"> <li>▪ Proper identification.</li> <li>▪ Listing of all written documents and plans.</li> <li>▪ Relevant findings of facts.</li> <li>▪ Relevant conclusion that rationalize the decision and any conditions.</li> <li>▪ The vote of the Board. Under statute, the granting of a special permit requires a super-majority of the Board in favor. Therefore, a vote of least 4 members in favor is required to grant a special permit.<sup>6</sup></li> <li>▪ In case of denial, reasons for denial.<sup>7</sup></li> <li>▪ In case of a grant of the special permit, a list of required plan modifications (if any) that must be made before the issuance of a building permit.</li> <li>▪ In case of a grant of the special permit, a list of conditions that must be met before specific deadlines or milestones, or that may be ongoing for the life of the use. There is a standard list of boiler-plate conditions that has evolved over time.</li> </ul>	
	Planning staff discusses draft decision with Selectman in charge, which may result in changes.	
	Draft decision goes into Selectmen's meeting package for discussion and vote. The Selectmen may send the draft back to staff for further changes before voting, or their vote may stipulate certain further changes to be made before the Chairman signs the decision.	
Filing Decision	The decision must be signed and filed with the Town Clerk within 90 days after the public hearing <sup>4</sup> , or such other time as is specified in a hearing continuation/ decision extension agreements.	Day 90 after Hearing
	Applicant and parties in interest, if aggrieved by the decision of the Board, have 20 days to file an appeal in court of law.	
	After that, the site plan special permit, if granted, is ready for implementation, subject to required plan modifications and conditions stated in the decision.	
	The applicant has up to two years to start the project, i.e. obtain a building permit.	

## **Site Plan Special Permit Amendments**

<p><b>If a proposed amendment triggers the site plan special permit thresholds<sup>8</sup> -</b></p>	<p>It is established practice that such an amendment is considered a new site plan requiring filing of a complete application, a full departmental review, public hearing notice in the newspaper, notification to parties in interest, public hearing, deadlines for action, and a new decision all as outlined above. Staff will assign a new permit tracking number and a new Board of Selectmen member will be assigned.</p>
<p><b>If a proposed amendment does not trigger the thresholds the procedure is a judgment call -</b></p>	<p>Every site plan special permit decision contains the following boiler plate provisions:          "Any changes to the site that are not in conformance with this site plan special permit shall require the approval of the Board."          and          "The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion."</p> <p><b>Public Hearing – Major Amendment</b></p> <ul style="list-style-type: none"> <li>▪ Staff may determine on behalf of the Board, after review of proposed amendment documents and plans, that a public hearing is appropriate due to the nature of the proposed amendment, the public exposure or visibility of the resulting changes as opposed to what was previously approved, outstanding compliance issues, or for other substantive reasons.</li> <li>▪ Staff will advise the applicant accordingly. The applicant may request a determination from the Board of Selectmen, if he/she disagrees with staff's determination. This has never happened; usually the applicant follows staff's advice.</li> <li>▪ Staff might also make the wrong call, i.e. send an amendment to the Board for consideration that it considered minor and not requiring a public hearing, whereas the Board determines that a public hearing should be held. In that case the amendment is remanded to the applicant.</li> <li>▪ Whether by staff determination or Board determination, if a public hearing is required, the proposed amendment will require filing an application for a site plan special permit amendment pertaining to the specifics of the amendment, a full departmental review, public hearing notice in the newspaper, notification to parties in interest, public hearing, deadlines for action, all as outlined above, and an amendment decision. No new permit tracking number will be assigned. To the extent possible the Selectmen assigned will be the same as the one assigned to the original site plan special permit. If no longer on the Board, a new assignment will be made.</li> </ul> <p><b>No Public Hearing – Minor Amendment</b></p> <ul style="list-style-type: none"> <li>▪ If by determination by staff or the Board no public hearing is required, plans and documents pertaining to the specifics of the amendment will be circulated to relevant departments for comment.</li> <li>▪ To the extent possible the Selectmen assigned will be the same as the one assigned to the original site plan special permit. If no longer on the Board, a new assignment will be made.</li> <li>▪ Planning staff reviews departmental comments, provides its own</li> </ul>

	<p>comments as appropriate, consults with Selectman assigned, and prepares a recommendation for action to the Board. This recommendation may include a draft amendment decision.</p> <ul style="list-style-type: none"> <li>▪ Staff may recommend, or the Board may require an appointment with the applicant at a regular Board meeting to present and explain the proposed amendment.</li> <li>▪ There are no timelines for processing minor amendments. But, staff tries to facilitate a reasonably fast turn-around for the applicant.</li> <li>▪ There will be no new permit tracking number.</li> </ul>
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- <sup>1</sup> The process for use special permits mirrors this outline for site plan special permits. There are additional tasks and steps underlying the processes for site plan and use special permits at the departmental/staff level, which are not mentioned here.
- <sup>2</sup> Filing with the Town Clerk starts the statutory special permit time clock that determines maximum times for public hearing (within 65 days of filing) and decision (within 90 days of date of public hearing).
- <sup>3</sup> For many years, the Town assigned the task of notifying parties in interest to the applicant. Some years ago we changed this for all matters related to the Planning Board because we discovered that case law requires the notices to come from the Town. It is my intent to recommend changing the Site Plan Special Permit Rules and Regulations to reflect a revised procedure for Site Plan consistent with how notices for Planning Board public hearings are handled. Until then the Chair should ask the applicant for the certified mail receipts or the registered mail return cards. Certified mail receipts are sufficient for proof of mailing the notice but unlike the registered mail return receipt cards they do not verify receipt by the addressee. The statute only requires notice "by mail, postage prepaid". Sometimes applicants drop off the receipts at the Planning Department before the hearing. In that case staff can verify their receipt. Once we have changed the procedure in the Rules and Regulations, the notices will come from the Town; we will hold the mail receipts in the permit file
- <sup>4</sup> M.G.L. Ch. 40A states that a decision must be filed with the Town Clerk within 90 days of the public hearing whereby it is unclear if the hearing date as originally advertised is meant or the date when the hearing is closed after one or more continued sessions.
- <sup>5</sup> M.G.L. Ch. 40, S. 53G provides a mechanism for an applicant to fund 3<sup>rd</sup>-party and peer reviews.
- <sup>6</sup> A vote of 3 members in favor, although a majority, still is a denial. The Board can take straw votes when discussing the decision to see how a super-majority might emerge. In case of a denial, the Board must formulate facts and reasons for doing so.
- <sup>7</sup> Unlike use special permits, which are required in certain zoning districts for certain land uses, site plan special permits are not considered discretionary. Denials cannot be handed down on the basis of a dislike for the use. Rather, a denial must be based on the inadequacy of the plan to meet zoning standards and to support the required Selectmen's findings as iterated in the zoning bylaw, section 10.4.5. A denial must be very well documented in fact and reason to survive a legal challenge.
- <sup>8</sup> See first page of this memorandum.